



Patent  
Customer No.: 022870  
Docket No.: 14690.002USB

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UNITED STATES PATENT AND TRADEMARK OFFICE  
PATENT OPERATIONS

Applicant: Myerson et al.

Application No.: 10/056490

Filing Date: 24 January 2002

Title: Method For Producing Crystal  
Polymorphs and Crystal Polymorphs  
Produced Thereby

Art Unit: 1654

Examiner: Russel, J.

RESPONSE AND AMENDMENT

Box Response - Fee  
Commissioner of Patents  
PO Box 1450  
Alexandria VA 22313-1450

5 September 2003

Atlanta GA 31156-7685

Sir:

Paper No. 4 dated 6 May 2003 from examiner Jeffrey E. Russel of Art Unit 1654

has been received. The following is submitted in response.

09/10/2003 EAREGAY1 00000014 10056490

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I certify that I have deposited this document with the United States Postal Service as First Class Mail with sufficient postage in an envelope addressed to: Box Response - Fee, Commissioner of Patents, PO Box 1450, Alexandria VA 22313-1450, this 5<sup>th</sup> day of September, 2003.

  
Laurence P. Colton

## STATUS

The above-captioned patent application is pending.

Claims 1-20 currently are pending in the patent application.

The Specification has been objected to for minor informalities.

The examiner has alleged that Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 USC 120.

Claims 1 and 11 have been objected to for a minor informality.

The Specification has been objected to on the allegation that it does not provide the proper antecedent basis for the claimed subject in Claim 1.

Claims 1-20 have been rejected under the judicially created doctrine of obviousness type double patenting as being unpatentable over Claims 1-26 of US Patent No. 6426406 to Myerson ("Myerson '406").

Claims 1-12, 19 and 20 have been provisionally rejected under the judicially created doctrine of obviousness type double patenting as being unpatentable over Claims 1-33 of copending Application No. 09/918935 to Myerson ("Myerson '935").

Claims 1-12, 19 and 20 have been provisionally rejected under the judicially created doctrine of obviousness type double patenting as being unpatentable over Claims 1-45 of copending Application No. 09/965751 to Myerson ("Myerson '751").

The examiner has taken position that because Myerson '935 and the present application are not commonly owned, the applications have conflicting subject matter.

The effective filing date of Claims 11-18 and 20 has been deemed by the examiner to be 23 October 2000, the priority date of the parent Patent Application Myerson '404.

The effective filing date of Claims 1-10 and 19 has been deemed by the examiner to be 24 July 2002, which is the filing date of the present application, and is prior art against the present application.

Claim 1-10, 19, and 20 have been rejected under 35 USC 102(e) as anticipated by Myerson '935, now published as US2003/0024470.

Claims 11-20 have rejected under 35 USC 102(b) as being anticipated by the article authored by Garetz et al. (the "Garetz Article").

Claims 12 has been rejected under 35 USC 102(b) as being anticipated by the Garetz Article in view of the Merck Index.

Claim 19 and 20 have been rejected under 35 USC 102(b) and (e), respectively, as being anticipated by US Patent No. 5976325 to Blanks (Blanks '325)

**EXTENSION OF TIME TO RESPOND**

A separate Petition for a One-Month Extension of Time to Respond to the outstanding Office Action und 37 CFR 1.136(a) along with the appropriate fee under 37 CFR 1.17(a)(3) is enclosed with this Response.

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